

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
MICHAEL J. LEHMKUHL *
SUZANNE C. SPINK *
MICHAEL H. SHACTER
KEVIN L. SIEBERT *
PATRICIA M. CHUH

* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI
L. L. P.

ATTORNEYS AT LAW
1776 K STREET, NORTHWEST, SUITE 200
WASHINGTON, D. C. 20006
(202) 296-0600

DOCKET FILE COPY ORIGINAL

GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909-1986

TELECOPIER (202) 296-5572
INTERNET PEPCOR@COMMLAW.COM
WEB SITE HTTP://WWW.COMMLAW.COM

December 17, 1997

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

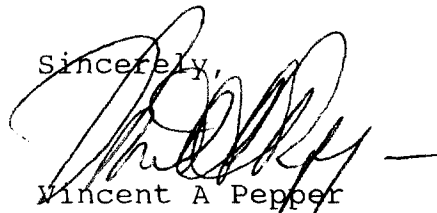
RE: **Second Further Petition for Reconsideration
WWAC, Inc.
MM Docket No. 87-268**

Dear Ms. Salas:

Transmitted herewith is an original and four (4) copies of the Second Further Petition for Reconsideration, filed on behalf of WWAC, Inc., licensee of Station WWAC(TV), Atlantic City, N.J.

Should you have any questions, please contact undersigned counsel.

Sincerely,



Vincent A. Pepper

Counsel for WWAC, Inc.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
And Their Impact Upon the)
Existing Television Broadcast)
Service)

TO: The Commission

SECOND FURTHER PETITION FOR RECONSIDERATION

BY WWAC, INC.

Vincent A Pepper
Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-0600 - Telephone
(202) 296-5572 - Telecopier

December 17, 1997

SUMMARY

The Commission adopted the Fifth Report and Order and Sixth Report and Order in this proceeding utilizing methodologies that will adversely affect a significant number of television licensees. Specifically, through the adoption of the "Core" spectrum plan, and the use of the predicted coverage contours as the basis for interference protection, the FCC DTV Table causes severe short-spacing in three "acute" regions.

Furthermore, the FCC DTV Table also causes the most severe short-spacing in the country with respect to Petitioner and two other television licensees. This factor is exacerbated by the current DTV rules that will restrict any future modification to the facilities of the three affected stations.

Alternatively, the MSTV DTV Table resolves the severe short-spacing fiasco between Petitioner and stations in Allentown, PA and Baltimore, MD. Further, it makes over 350 improvements to the FCC DTV Table, removing interference, and providing future opportunities for stations to expand its service. Finally, the proposed DTV Table will reduce the overwhelming disparity between UHF and VHF stations, all the while ensuring that the public receives the highest quality television signal.

While Petitioner has already suggested several other, more beneficial, alternatives that it has urged the Commission to consider, Petitioner believes that the proposed MSTV DTV Table reflects a viable option in serving the public interest.

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TO: The Commission

SECOND FURTHER PETITION FOR RECONSIDERATION
BY WWAC, INC.

I. INTRODUCTION

WWAC, Inc., the licensee of Station WWAC(TV), Atlantic City, New Jersey, by its attorneys, hereby submits its Second Further Petition for Reconsideration of the Fifth Report and Order and Sixth Report and Order in the above-referenced proceeding.

Petitioner requests that the Federal Communications Commission ("FCC" or "Commission") review the "Ex Parte Submission" by the Association for Maximum Service Television, Inc. ("MSTV"), filed on November 20, 1997, and exchange the DTV Table of Allotments adopted by the Commission in the Sixth Report and Order with the proposed DTV Table of Allotments contained therein.

As discussed more fully below, by adopting the alternate DTV Table of Allotments proposed by MSTV, the Commission will ensure that a large number of the short spacing and interference problems resulting from the FCC's DTV Table will be removed. Further, the alternate DTV Table will assist stations in providing a clearer signal to a larger audience than will the current DTV Table.

Finally, the Commission is urged to disregard the consideration of any factor, including expedience or revenue expectations, when establishing the best technical DTV facilities.

II. BACKGROUND

The Fifth Report and Order and the Sixth Report and Order, adopted by the Commission in the Advanced Television proceeding, established the rules for the implementation of digital television across the nation.^{1/} In the Fifth Report and Order, the Commission established the criteria for eligibility and the implementation schedule for digital television. The Sixth Report and Order set forth the allotment and assignment principles, and adopted the DTV Table of Allotments ("FCC DTV Table").

On June 13, 1997, Petitioner filed a Petition for Reconsideration of the Fifth Report and Order and the Sixth Report and Order, citing the deficiencies of the adopted rules, and requesting a complete reconsideration in light of the severe effect that the rules will have on the Petitioner.

Subsequent to the adoptions of these rules, Congress included a section in the Balanced Budget Act of 1997 which modified the DTV rules adopted by the Commission, and conditioned the reclamation of

^{1/} In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, MM Dkt. 87-268, FCC 97-116 (rel. Apr. 21, 1997) [hereinafter Fifth Report and Order]; In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order, MM Dkt. 87-268, FCC 97-115 (rel. Apr. 21, 1997) [hereinafter Sixth Report and Order].

spectrum upon the successful roll-out of the new service.^{2/} In turn, the FCC adopted a Notice of Proposed Rulemaking, which proposed to re-allocate the spectrum once used for television channels 60-69 to fixed and mobile services, and for public safety use.^{3/}

In response to these actions, Petitioner filed a Further Petition for Reconsideration on September 15, 1997, requesting that the Commission allow WWAC(TV) to operate in the 60-69 channel band during the transition to digital television, and then move into the "core" region once the analog channels are returned.

On November 20, 1997, MSTV filed its "Ex Parte Submission" proposing an alternate DTV Table of Allotments which reduced the severe short spacing between stations, especially those licensed in the three "acute" regions of the country. Furthermore, on November 25, 1997, the Association for Local Television Stations ("ALTV") filed a Letter Proposal with the Commission. In this Letter, ALTV noted the great disparity between VHF and UHF power levels in the DTV Table, and proposed that UHF stations be permitted to increase their maximum power to 1000 kW, while using tilt-beam antennas and any other technology to prevent an increase in the visible interference caused by the increase in power.

In response to these pleadings, the Commission released a

^{2/} Balanced Budget Act of 1997, Pub. L. 105-33, Section 3003 (Aug. 5, 1997).

^{3/} In re Reallocation of Television Channels 60-69, the 746-806 MHz Band, FCC 97-245 (rel. July 10, 1997) [hereinafter Reallocation NPRM].

Public Notice on December 2, 1997, which opened a limited window to file comments on these pleadings. Therefore, WWAC, Inc. hereby petitions the FCC to reconsider its adoption of the DTV Table of Allotments in the Sixth Report and Order, and requests that the Commission adopt MSTV's proposed DTV Table which will significantly alleviate the severe short spacing caused by the FCC DTV Table. By replacing the FCC DTV Table with that provided by MSTV, the Commission will be acknowledging the fact that the current DTV Table causes severe short spacing between stations, and will resolve many of over 250 pending Petitions for Reconsideration filed to date.

III. DISCUSSION

Generally, the proposed MSTV DTV Table of Allotments re-assigned DTV allotments in an attempt to remedy the severe short spacing in the three "acute" regions of the country, i.e., the Northeast Corridor, the Great Lakes Region, and the West Coast. Through the use of distance-based signal protection, the proposal will also ensure a lower level of interference and an expansion of service areas.

Therefore, the proposal will serve the public interest, convenience and necessity by offering a more fair, efficient, and equitable method for allocating the digital television spectrum, and by ensuring that the overriding goal of the DTV Proceeding, to provide the highest quality signal, will be met.

A. Alternatives Supported by WWAC, Inc.

As noted above, WWAC, Inc. previously filed two petitions for reconsideration of the FCC DTV Table of Allotments. The instant Petition for Reconsideration offers yet another alternative for the Commission to consider when reviewing the filings in this proceeding. It must be noted, however, that WWAC, Inc. views each of its proposals as a compromise.

These proposals are compromises in light of the Commission's apparent refusal to consider WWAC's pending application. WWAC, Inc. filed an application to modify its facilities on May 8, 1996. (BPCT-960508KM) The proposal would increase the station's power to 5 mW, and relocate its tower site to a location that would enable the station to serve a larger portion of its market. However, the Commission did not acknowledge this application when developing its DTV Table. Instead, the Commission merely replicated its current operating service contours in the Table.

Exacerbating the problem, the Commission also assigned the same DTV channel to stations in Allentown, Pennsylvania and Baltimore, Maryland. As such, WWAC, Inc. has been placed in the unenviable position where it must to propose a myriad of alternatives in order to expand its service, and to solve the severe short spacing caused by the FCC DTV Table.

As noted in its Further Petition for Reconsideration, WWAC, Inc. acquired Station WWAC(TV) nearly 10 years ago. At that time, the station was silent. In the intervening years, WWAC, Inc. has

brought Atlantic City's sole local television station back to operation, albeit at less than full power.

Additionally, Petitioner has expanded the cable carriage of the station, to the point now where over 500,000 residences receive its service. Furthermore, as an independent station, WWAC has introduced new, innovative programming utilizing the newest technology. Its schedule now includes several "interactive" programs where the public is encouraged to contact the station during the show, and offer comments and alternate views.

The licensee filed its application to modify the facilities so that it could increase its audience reach, and offer its service on additional cable companies. This application represents WWAC, Inc.'s continued dedication to the Atlantic City community, and its intention to better serve its audience by growing into the maximum power authorized by the Commission. The FCC DTV Table failed to acknowledge this dedication, and has placed an engineering straight-jacket on the future growth of the station.

The best solution to the severe short-spacing caused by the Commission's DTV Table would be to grant WWAC's modification application, and the equivalent digital spectrum. Since the transition to digital television will span, at least, the next nine years, there will be little overall harm if the Commission expended its resources now to remedy the problems caused by the DTV Table.

If the DTV Table is not modified now, WWAC will not be able to petition the Commission to modify the DTV Table in the future, due

to the inter-relatedness of each station. In fact, the Commission will never be able to selectively modify the DTV Table in the highly congested regions of the country, due to the limited spectrum allotted for digital television. The Commission must acknowledge now that future changes to the DTV Table in congested areas can never occur, and take time now to correct its inherent problems.

If the Commission fails to grant the WWAC modification application, its best alternative would be to adopt the proposals contained in the Petitioner's Petition for Reconsideration filed on June 13, 1997. If the Commission intends to continue using a station's predicted contours as the basis for allocating digital spectrum, it should at least ensure that there is enough spectrum to provide each licensee the flexibility to relocate its transmitter site, or to improve its facilities. By adopting the "Core Spectrum" plan, along with the predicted contour methodology, the Commission has placed all licensees in an engineering straight-jacket which will forever prohibit the future improvement of its facilities.

Alternatively, should the Commission decide not to fully reexamine its underlying rationale adopted in the DTV Table, the Commission must then allow those licensees which are severely short-spaced to move to a channel outside the core region during the transition. By doing so, the Commission would allow the licensee to expand its service now, and would permit future

assignments of fully spaced facilities on the spectrum reclaimed by the Commission in 2006. Again, this solution is not as satisfactory as granting WWAC's pending application to increase power, but this plan will at least allow the station to expand its facility in the near future.

Finally, the instant petition, incorporating herein the MSTV petition, provides the Commission the minimum alternative: to merely correct the severe short spacing that it caused by adopting the DTV Table. While this proposal fails to provide Petitioner the opportunity to expand its facilities to the degree that it had applied for over a year and half ago, at least it removes the Baltimore-Allentown-Atlantic City short spacing, and expands the service area of Station WWAC(TV).

B. Differing Methods for Protecting the Stations Signal

The fundamental difference between the FCC DTV Table, and that proposed by MSTV is the use of distance-based interference protection. Under the FCC DTV Table, the protection afforded to each station is based on the existing predicted signal contours. Rather than establishing a distance-based contour protection methodology, as used in the FM service and analog television, the FCC DTV Table attempts to protect coverage based on the same methodology as used in the AM radio service. The result will create increased interference to all station signals, especially in areas of high concentration. This problem cannot be more evident that here in Washington, D.C., where there is not one AM signal

that is free from interference.

Alternatively, the MSTV establishes a distance-based contour in which the signal is protected from all interference. Under this method, those viewers within the contour will receive a clear, protected signal, while those outside the contour may receive a weaker, unprotected signal due to the interference caused by other stations. By establishing this methodology, the MSTV DTV Table allows a greater opportunity for an expansion of the television viewing area, and ensures a better signal to a larger portion of the licensed community. The result of adopting MSTV's methodology is the dramatic improvement of the stations audience reach, evidenced by its 357 improvements to the FCC DTV table.

Clearly, these modifications would further the goals of the Communications Act, as the MSTV DTV Table would be a more "fair, efficient, and equitable" DTV plan. 47 U.S.C. § 307 (1994) The plan is fair, as it protects every station's signal to the same degree. Further, since it will reduce the interference between stations, and increase the audience reach of the stations, it is the most efficient method for allocating the spectrum. Finally, since the proposal will reduce the disparity between UHF and VHF stations, the MSTV proposal results in an equitable use of the spectrum.

C. Expansion of Service

As discussed above, under the FCC DTV Table, each station will be restricted to the power levels authorized in the DTV Table.

While the station may request authorization to increase its power, it must show that the increase will not cause interference to any other television station.

However, in the highly-congested regions, a station will find it nearly impossible to make such a showing. For example, the FCC DTV Table assigned Channel 46 to Station WFMZ(TV) in Allentown PA, Station WBFF(TV) in Baltimore MD, and Petitioner in Atlantic City NJ. As a result, under the FCC DTV Table, these stations experience the most severe short-spacing in the Northeast Corridor. See Maranatha Supplement to Petition for Reconsideration (Aug. 22, 1997). Without some form of relief now, these stations never will receive authorization to expand their facilities in the future. Any attempt to make a discrete allocation change in the Northeast Corridor would certainly result in the collapse of a digital house of cards.

The impact of these conditions will be more difficult to UHF stations which are currently authorized to operate at a lower power than their competing VHF stations. Within the market, these stations are now at a competitive disadvantage, as they can not offer potential advertisers the same audience penetration as can a high-powered VHF station.

Petitioner noted these considerations in its Petition for Reconsideration filed on June 13, 1997. Rather than level the playing field in the introduction of the next generation of digital television broadcasting, Petitioner argued that the Commission

merely codified the disadvantages currently present in analog television. These same concerns were also raised by Senators McCain and Burns in their November 3, 1997 letter, which is attached as Exhibit A for ease of reference. In this letter, the Senators expressed their concern that the power disparities between VHF and UHF stations will result in the UHF stations not being able to reach their core business and audience area.

As a partial remedy, ALTV outlined its proposed procedure for increasing the power of UHF stations to 1000 kW in the Letter Proposal filed on November 25, 1997. In order to increase the station's power, a licensee must provide proof that the increased power will not increase the parameter field strengths. A licensee would be permitted to use tilt beam antennas or other technology to attain this goal.

Petitioner believes that this proposal may offer minimal improvements to current rules. While any proposal which levels the playing field is supported, the ALTV proposal does very little to address the underlying problem with the DTV Table. Therefore, Petitioner recommends that the Commission review the core principles establishing the DTV Table, rather than expend its resources to make cosmetic changes to the existing rules.

On the other hand, MSTV's proposal addressed the fundamental problems with the DTV Table. The proposed DTV Table is a viable solution to most of the short spacings in the acute regions, through the placement of a limited number of stations into the 60-

69 channel band. In doing so, the MSTV table increases the opportunity for all stations to expand their coverage area.

Specifically, the MSTV DTV Table would increase the coverage of Station WWAC(TV) from 1323 square kilometers to 8538 square kilometers, an improvement of over 645 percent, and would add over 280,000 more persons to the WWAC(TV) community. Even this expansion of service, though, is tempered by the fact that nearly one-half of the expanded service area would be over the Atlantic Ocean. However, if adopted, the MSTV DTV Table would still afford WWAC(TV) the opportunity to provide a much clearer signal to an increased audience.

These changes reflect the most important consideration in the transition to digital television: to provide the highest quality signal to the public. The Commission has always been required to consider this factor when allocating spectrum. The Supreme Court in Federal Communications Commission v. Sanders Bros. Radio Station, 309 U.S. 470 (1940), expressed this overarching goal when it held that "[a]n important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts." Id. at 475. See also National Broadcasting Co. v. U.S., 319 U.S. 190, 216 (1943).

Until this proceeding, the Commission has continuously amended its rules to allow for the improvement of broadcast services. When the Commission adopted the television rules, the expressed goal was

to offer a more expansive service to the public. The Commission allocated spectrum in both the VHF and UHF bands because it did not believe that "sufficient spectrum space would be provided for an adequate nationwide television service if only the UHF portion of the spectrum is allocated for commercial television broadcasting." In re Amendment of the Commission's Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service, Fifth Report and Order, 41 FCC 142, ¶25 (1951)

Further, when new technology allowed the introduction of color television, and then stereo sound, the Commission adopted rules ensuring that this technology would benefit the public.⁴ Finally, the Commission adopted rules introducing FM service with the intention of offering better service to the public through clearer radio service than from the AM service.⁵

However, the Commission made a decidedly different decision in adopting the current DTV rules. Rather than adopt rules that would ensure that every DTV station will be allowed to offer clearer, high-quality television service, the Commission adopted rules that will ensure that licensees will be prohibited from expanding their

^{4/} See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Notice of Inquiry, 2 FCC Rcd 5125, ¶ 5 (1987) (giving a brief history of the development of the NTSC standard).

^{5/} See In re Revision of FM Broadcast Rules, First Report and Order, 33 FCC 309, ¶ 1 (1962), where the Commission stated that the proceeding was intended to determine "what changes in the FM rules and technical standards are necessary for the optimum development of this broadcast service, and how the expansion of the service can be achieved..."

facilities, and from providing the best possible service to their community. Quite clearly, some other consideration must be operating against the goal of offering the best practicable service to the public. Rather than adhering to this principal of expanding broadcast services to the public, it has acted solely in political expedience.

D. Forbidden Considerations

While the Commission is required by the Balanced Budget Act of 1997 to auction the recovered spectrum in 2002, the Commission must first ensure that the remaining spectrum is used most effectively, and fairly, for all television licensees.

In another recent letter to Chairman Kennard, attached as Exhibit B, Senator McCain expressed his concern about the successful transition to digital television. The Senator expressed concern that the MSTV DTV Table would "introduce further delay and uncertainty into the conversion process...[and]...radically depress the value of the returned analog spectrum." Letter, pg. 2 (emphasis added). The Senator attempted to justify this position by noting that the spectrum is to be re-assigned for Public Safety purposes.

While the Petitioner believes that the reassignment of a portion of the 60-69 channel band for Public Safety is a laudable goal, the Senator's concern about the depressed value of the spectrum should the MSTV DTV Table be adopted conflicts directly with the Communications Act of 1934, as amended. Section 309(j)(7) of the Act mandates that the Commission shall not base its

decisions "solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding." 47 U.S.C. § 309(j)(7)(a) (1994) Further, nothing in the Balanced Budget Act of 1997 modified, or superseded this provision.

Senator McCain's view displays the growing consideration of political views in a process that has been mandated to be void of such concerns. Petitioner believes that these concerns, which are predominantly based on the expectation of revenues, should be removed from considerations that are solely technical in nature. Expediency in allocating the spectrum is not the same as the efficient use of the spectrum. As shown in this case, the two are diametrically opposed.

Furthermore, Petitioner notes that, under the current DTV Table of Allotments, the interference problems now present in the AM service will be replicated in the TV service. Rather than guarantee that the highest quality television signal will be provided, the Commission, and Senator McCain, have replaced this goal with that of receiving the greatest possible revenue for the United States Treasury.

The Commission should focus on ensuring that each licensee receives a viable portion of the spectrum to provide its invaluable service to its community. Digital television will offer licensees the unique ability to bring the clearest, high-quality television signal to the American public. The clarity of a DTV signal has been compared to a 35 mm photograph. By granting each station a

portion of the spectrum to provide these services, the FCC has given each broadcaster the opportunity to serve its community with its current service, and the capability to expand its offerings.

The available options will dynamically change the way the country views its local television station. The Federal Communications Commission must do everything in its power to ensure that this view is not clouded by unnecessary interference, or by political expediency. At these crossroads, the Commission must ensure that it adopts the fairest, the most efficient, and the most equitable digital television rules. Only when it has done so will the Commission meet its obligation to serve the public interest, convenience, and necessity.

IV. CONCLUSION

With these statutory considerations in mind, Petitioner requests that the Commission reconsider the adoption of the DTV Table of Allotments. Petitioner's ultimate goal is to have its modification application granted, and the equivalent digital spectrum assigned. Barring this action, Petitioner encourages the Commission to reconsider its adoption of the "Core Spectrum" plan, and the use of predicted contours to establish protected service areas. If the Commission decides to deny each of these requests, then it should assign a limited number of stations DTV channels in the 60-69 band during the transition to digital television, and provide assignments in the "core spectrum" when the analog channels

are recovered in 2002.

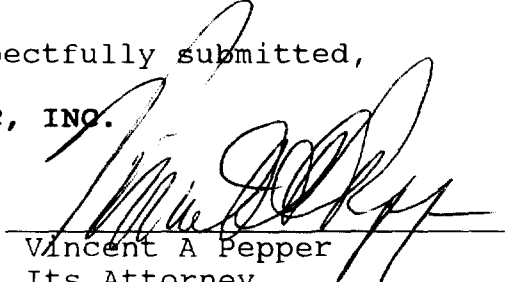
At the very least, the Commission should adopt a DTV Table that reflects the overriding consideration of best serving the public interest. The MSTV DTV Table, while not perfect in all respects, does reflect this overriding goal.

Therefore, Petition believes that the proposed MSTV Table could be an effective compromise, and urges its adoption by the Commission.

Respectfully submitted,

WWAC, INC.

By



Vincent A. Pepper
Its Attorney

PEPPER & CORAZZINI, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

December 17, 1997

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EXHIBIT A

JOHN MCCAIN, ARIZONA, CHAIRMAN

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United States Senate

COMMITTEE ON COMMERCE, SCIENCE
 AND TRANSPORTATION

WASHINGTON, DC 20510 6126

November 3, 1997

The Honorable William E. Kennard
 Chairman
 Federal Communications Commission
 1919 M Street, N.W.
 Washington, D.C.

Dear Mr. Chairman:

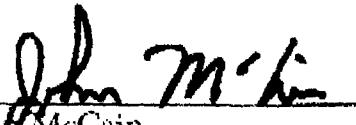
We have reviewed the power assignments that were included in the Sixth Report and Order, "Advanced Television Systems and Their Impact upon the Existing Television Broadcasting Service." It is apparent the Order creates a transmission power disparity between many existing UHF stations and VHF stations that are moving to the UHF band for digital television (DTV) operations.

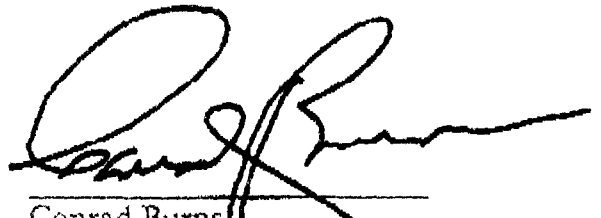
For the first time, DTV will permit most television stations to operate in the same band of the electromagnetic spectrum where there are no technical limitations on treating all television stations the same. However, in a majority of markets, VHF stations relocating to the UHF band for DTV operations will have approximately twenty times more transmission power than UHF stations remaining in that band for DTV. We are concerned about this disparity because it disadvantages the nation's UHF broadcasters. Computer models created by the U.S. Department of Commerce, National Telecommunications Information Administration's (NTIA) Institute for Telecommunications Sciences (ITS) dramatically confirms the significant differences in broadcast coverage between the maximum (1,000,000 watts-VHF stations) and minimum (50,000 watts-UHF stations) broadcast power levels assigned to DTV stations in the same market, in many cases, resulting in a substantial decrease in audience reach for UHF stations.

We believe this matter must be remedied as quickly as possible. The uncertainty and delay in resolving the power disparity issue will further delay, and may ultimately impede, the transition to DTV. We urge the Commission to replicate the level playing field that exists today by making it possible for both VHF and UHF broadcasters to cover their core business/audience area. Such action would ensure fair competition and the ultimate success of DTV.

We appreciate your timely attention to this matter.

Sincerely,


John McCain
Chairman


Conrad Burns
Chairman, Subcommittee on
Communications

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani

EXHIBIT B